

See Attachment

7
12/26/00
vlf

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CARLOS OCTAVIO SIMO-THEN,
Petitioner,

v.

CHARLES ZEMSKI, ET AL.,
Respondents

:
: CIVIL NO. 1:CV-00-1808
:
: (Judge Kane)
:
:

FILED
HARRISBURG, PA

DEC 21 2000

MARY E. D'ANDREA, CLERK
Per _____
Deputy Clerk

ORDER

NOW, THIS 21st DAY OF DECEMBER, 2000, upon consideration of the facts that:

(1) on October 31, 2000, the court issued a show cause order (Doc. 3) directing respondents to file a response to the petition for writ of habeas corpus within twenty (20) days of the date of that order; (2) on November 6, 2000, George C. Nye, Warden at the Snyder County Prison filed a letter with the court stating that although he is listed as a respondent in the instant petition he is unable to respond to the allegations in that they deal exclusively with Immigration and Naturalization matters (Doc. 4); (3) none of the other respondents which include the Immigration and Naturalization Service (INS); Charles Zemski, INS District Director; and Janet Reno, United States Attorney have filed a response to the petition or sought an extension of time within which to do so; and (4) presently pending is a motion for declaratory judgment filed by petitioner on December 15, 2000, seeking a declaration that respondents are in default by failing to respond to his petition (Doc. 5), **IT IS HEREBY ORDERED AS FOLLOWS:**

1. Petitioner's "Motion For Declaratory Judgment" (Doc. 5) is DENIED.¹
2. Respondents are directed to file a response to the petition within ten (10) days of the date of this order.



YVETTE KANE
United States District Judge

YK:lq

1. It has been held that "[t]he failure to respond to claims raised in a petition for writ of habeas corpus does not entitle the petitioner to a default judgment." Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1989) (collecting cases.) See also Atkins v. United States, Civ.A.No. 88-5106, 1990 WL 126196, at *2-3 (D.N.J. August 27, 1990); cf. Ruiz v. Cady, 660 F.2d 337, 341 (7th Cir. 1981) (default judgment warranted if delays in the pleadings are extreme or when such delay can be construed to indicate that petitioner is in fact being held unconstitutionally).

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

December 21, 2000

Re: 1:00-cv-01808 Simo-Then v. Zemski

True and correct copies of the attached were mailed by the clerk
to the following:

Mark E. Morrison, Esq.
Office of the United States Attorney
P.O. Box 11754
Harrisburg, PA 17108-1754

Carlos Octavio Vladimir Simo-Then
CTY-SNY
Snyder County Jail
00-00236
600 Old Colony Rd.
Selinsgrove, PA 17870-8610

cc:
Judge (☒)
Magistrate Judge ()
U.S. Marshal ()
Probation ()
U.S. Attorney ()
Atty. for Deft. ()
Defendant ()
Warden ()
Bureau of Prisons ()
Ct Reporter ()
Ctroom Deputy ()
Orig-Security ()
Federal Public Defender ()
Summons Issued () with N/C attached to complt. and served by:
U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5 ()
Order to Show Cause () with Petition attached & mailed certified mail
to: US Atty Gen () PA Atty Gen ()
DA of County () Respondents ()
Bankruptcy Court ()
Other SLC (☒)

MARY E. D'ANDREA, Clerk

12-21-00

[Handwritten signature]